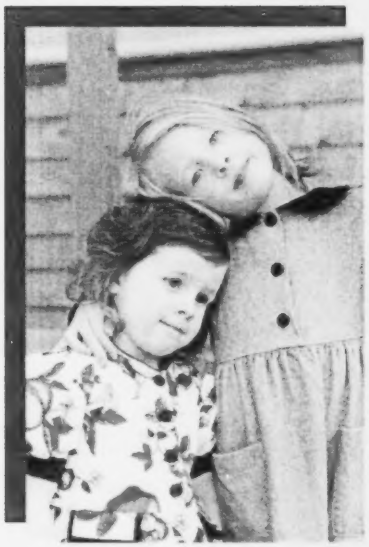

A Coherent and Principled Response to Family Violence in Alberta

Recommendations for Action and Change

Submitted to:
Honourable Iris Evans
Minister of Children's Services
October 31, 2003

Submitted by:
William Hurlburt, Q.C.
Judge Walder White
Family Violence Review Team

PROVINCIAL RESPONSE TO FAMILY VIOLENCE REVIEW 2003

Review Team

William Hurlburt, QC

Judge Walder White

October 31, 2003

Honourable Iris Evans
Minister
Children's Services
107 Legislature Building
Edmonton, Alberta
T5K 2B6

Dear Minister Evans:

Attached is our report *A Coherent and Principled Response to Family Violence in Alberta: Recommendations for Action and Change.*

We enjoyed the opportunity to be engaged in examining this very serious issue and identifying innovative ways to address the problem of family violence in Alberta. We hope that you will find our Report helpful in developing a comprehensive approach to reduce and prevent the devastating consequences of family violence on abused family members, on children, and upon society as a whole.

Again, thank you for the opportunity to be involved in this work.

Sincerely,

William Hurlburt, Q.C. Judge Walder White

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Part I: General Introduction

Purpose of Report

In January 2003, the Minister of Children's Services asked for our thoughts on Alberta's current legislation and policy for the prevention of family violence, and where possibilities exist for ensuring comprehensive services of the highest standard.

On March 31, 2003, we submitted our report to the Minister, which has since been distributed as *Discussion Draft to the Minister of Children's Services: Responses to Family Violence* (which will be referred to as "our March 31 Report"). That report made a number of recommendations.

The Minister subsequently asked us to give our thoughts about implementation of the recommendations contained in our report. This report is our response to that request. It builds upon the March 31 recommendations.

Overview of Family Violence Problems

Why special measures are needed for family violence

Violence within families is tragically common in human society. It is found at all income levels and in all cultural and ethnic groups. Intimate family relationships create vulnerability, facilitate violence and its concealment, and exacerbate the effect of violence within those relationships. Violence within family relationships is a threat to the development of children, whether the violence is experienced by them directly or is observed being directed towards a parent.

The abolition of family violence would require a transformation of human society as we know it. Abolition is therefore an impossible objective. Alleviation is not. There are things that can be done to ameliorate the devastating consequences of family violence on abused family members, on children, and upon society as a whole. These include increasing public awareness of the existence and the evils of family violence, and increasing

the extent and effectiveness of services designed to cope with the effects of family violence and to break the inter-generational cycle of family violence.

Family violence is a social problem that needs special attention, special preventive measures before it occurs, and special remedial measures after it has occurred. It is for those reasons that it should be, and is increasingly, regarded as a subject which is unique and which requires unique consideration and treatment. It is for these reasons that we have undertaken to see whether we can put forward useful concrete steps that will improve the societal response to the problems of family violence and thus alleviate its effects. We hope that these proposals will be meaningful and useful. If they are, it is not because we have special knowledge or expertise, but rather because we have gathered facts and opinions from those who do.

What family relationships involve family violence

In the past, "family" was a term used to denote parents and children, and, in a broader sense, those with close blood ties to each other. In recent years, the concept has broadened. It is used to include childless spouses. It is used to include partners in "common-law" relationships and their children, or childless partners. It includes, though this is not accepted universally, partners in same-sex relationships. These are all recognized by the *Adult Interdependent Relationships Act*. All are intimate relationships within which, or after the breakdown of which, family violence may occur.

"Family" relationships also include relationships between older adults and their children, grandchildren, step-children, nieces and nephews, or the spouses of any of these.

Nature of family violence

Where relationships between partners who are or have been in an intimate relationship are abusive, they typically involve a course of behaviour whereby one partner exerts control over, and exploits, the other partner. The behaviour may include physical violence and threats of physical violence. It may include constant denigration of the other partner; dominance of the other partner by economic means; and isolation of the

other partner from friends and social life generally, leaving the abused partner dependent on the abusive partner.

Family violence against an older family member may arise from a long-standing pattern of family violence. The older family member now being abused may have been abusive in times past. An adult child with a substance or other lifestyle problem may abuse the older family member in order to get money. A caregiver may become abusive through the stress of the care-giving. We think, however, that abuse of older family members is also controlling and exploitative.

Social attitudes

Some social attitudes have contributed to the problem of family violence. Others have led to its concealment. Wife-beating has been seen as normal. Neighbours have not wanted to get involved. Shame has led abused partners, male as well as female, to conceal family violence against themselves and against their children. Customary dependence of one partner on the other, as well as feelings of subservience, has led to acceptance of family violence without complaint. For similar reasons, older adults who are abused by family members often keep silent, as abusive contact is seen as better than no contact. Family violence has tragic personal consequences for its victims. It also has serious economic consequences, from costs imposed on the health care system to costs imposed on police services, Child Protection services and the justice and social assistance systems.

Some changes in social attitudes have come about. Highly-publicized murder-suicides have given rise to a Coroner's Inquest in Ontario. This amounted to a public inquiry followed by the appointment of a Joint Committee on Domestic Violence, which made substantial recommendations to prevent a recurrence; and to a public inquiry in Manitoba, which was also followed by committee recommendations. The subject is much more in the public mind than it was in the past. It is increasingly recognized that family violence is an endemic problem of society, the reduction of which is a major objective of public policy.

Formerly, a "domestic" was not seen as criminal conduct; it was the business of the family and did not involve a public interest. A change in attitudes led to the adoption of "zero tolerance" by police and prosecutors, under which police would lay a charge if they had reasonable and probable grounds to believe that a partner has committed a criminal

act against another and prosecutors would prosecute if they had the same grounds and if the prosecution was in the public interest. This was intended to recognize that family violence is as much a crime as other violence (or even more: evidence that an offender, in committing an offence, abused the offender's spouse or common-law partner or child, is an aggravating circumstance: s. 718.2(a) (ii)). This practice was intended to remove from a victim of family violence the responsibility for laying a charge.

In Alberta, the Office for the Prevention of Family Violence has been in existence since 1984 and has made efforts to bring the subject to public attention, including the establishment of a Family Violence Month, and an Interdepartmental Committee on Family Violence has also operated since 1984. In 1998, with effect from 1999, the *Protection Against Family Violence Act* has provided for Emergency Protection Orders which can be obtained at any time by telephone application to a justice of the peace or Provincial Court judge by a victim of family violence or by police or social workers, and for Queen's Bench Protection Orders which can be obtained from the Queen's Bench either on a mandatory review of an Emergency Protection Order or separation by application.

The major official agencies – police, Child Protection, prosecutors, courts, probation services – have adopted specific measures to deal with the problem, including two specialized Domestic Violence Courts and joint ventures between services. Communities have organized to meet the problem, through the provision of emergency women's shelters, victims' services units, and many other services. More recently, Premier Klein has identified the problem of family violence as a major government concern, and has announced that a Roundtable will be held to bring together all the government departments and community agencies involved in the prevention of, and response to, family violence. Our work is thus part of a concerted community response to the problem.

Objectives of the Alberta Response to Family Violence

We repeat here that the objectives of the response of the community to the problem of family violence should be as follows.

- To eliminate family violence to the extent possible.
- To ensure the safety of abused family members and children.

- To ensure that abused family members and children:
  - are given counselling and emotional support; and
  - have places to live and sufficient economic support to obtain the necessities of life and maintain their independence.
- To ensure that courts dealing with parenting or custody of, or access to a minor:
  - will have before them all information and submissions that they need in order to make proper dispositions according to law; and
  - will have available to them facilities necessary to protect the safety of abused family members and children.
- To ensure that abusing family members who commit criminal offences:
  - are convicted and punished where appropriate;
  - are prevented or deterred from committing further family violence;
  - where appropriate, are given treatment designed to break the cycle of family violence and prevent its recurrence.

The legislation we propose will declare that these, subject to necessary revisions, are the objectives of the response of the people and the Legislature of Alberta to family violence.

Need For a Coordinated and Principled Service Approach

Our initial reaction

We have been struck by the following:

- the rich variety of services available in Alberta that are prepared to respond to family violence in both the private and public sectors; and
- the number of people in both sectors who are capable, compassionate, and dedicated to alleviating or solving the problems created by family violence.

We have also been struck by the results that can be achieved when the services provided by police, Child Welfare, prosecutors, judges, probation officers and social services for abused family members are merged into a coordinated and principled whole and when they are adequately resourced.

In contrast, we have been struck by the difficulties encountered and frustrations endured by service providers who are compelled to carry on their work without close contact with other service providers and without sharing of information with other service providers.

Towards a coherent and principled response to family violence

In our opinion, the following components are essential to provide a coherent and principled response to family violence:

- Effectual police action whenever family violence occurs.
- Adequate protection for family members who are abused, and their children.
- Adequate shelter and accommodation, adequate financial support where needed, and adequate counselling support for family members who are abused.
- Protection of children who have been abused or who are at risk of abuse, including children who have witnessed parental violence.
- Effectual prosecution of criminal charges against violent family members.
- Court dispositions that will impose appropriate sanctions for criminal conduct and, where appropriate, will impose conditions intended to prevent recurrence.
- Counselling and treatment of violent family members where appropriate.
- Effectual enforcement of court dispositions.

These components can achieve their maximum effect only if:

- there is a free flow of necessary information among the various services involved in the response to family violence; and
- the various services understand their respective functions and the functions of the other services and work together to provide an integrated and coordinated response to specific incidents of family violence.

It is imperative that an official agency made up of government and community members be given responsibility for overseeing and implementing the whole of Alberta's response to family violence. This Report gives our views as to how these objectives can be achieved.

Scope of Report

The proposals made in this report are intended to apply to all Albertans who are affected by family violence, including abused family members, abusive family members and children. This includes family violence in or arising from heterosexual relationships and same-sex relationships. It includes family violence by males against females, females against males, females against females and males against males. It includes abuse of older and disabled adults by family members.

It is our view that services provided by agencies of government, in its largest sense, should be equally available to all Albertans. The agencies include police services, Child Protection, courts, prosecutors and Community Corrections. These agencies, of course, take specific circumstances into account in performing their functions. Child Protection functions have been delegated to some First Nations and Metis organizations, and the probation function has been delegated to some First Nations organizations, but these functions are performed in accordance with the general policies of the Province.

Some legislation makes specific reference to specific cultural communities. Under s. 718.2 of the *Criminal Code*, a court, in sentencing, is directed that "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders". Under s. 2(h) of the *Child Welfare Act*, as it will stand after Bill 24 is proclaimed, any decision concerning the placement of a child outside the child's family should take into account the benefits to the child of placement within the child's extended family, placement within or as close as possible to the child's home community, and placement that respects the child's familial, cultural, social and religious heritage. These provisions adjust the law to special circumstances, but leave the general policy of equal protection of the law untouched.

As we will point out later in this report, the services provided by other agencies should be designed and delivered at the community level in general, including, in particular, in Aboriginal communities and any other culturally-based communities.

Procedures Followed in Preparing This Report

Our approach has been pragmatic. We have tried to obtain an understanding of:

- how government, courts, court services, police, Child Welfare, lawyers and participating private agencies respond in Alberta today to the problems created by family violence;
- how effective the collective responses are;
- how the collective response may be improved in order to:
  - lessen the risks and burdens on abused partners and their children; and
  - where possible, break the cycle of family violence.

We have:

- Tried to identify the concrete steps that would turn our recommendations into actions.
- Tested the validity of our thinking through meetings at nine Alberta centres (Calgary, Edmonton, Edson, Fort McMurray, Grande Prairie, Lethbridge, Medicine Hat, Red Deer and Wainwright) with those responsible for services in the regions surrounding those communities provided by Family and Community Social Services, Family and Children Service Authorities, police services, probation services, prosecutors, AADAC, therapists, emergency women's shelters and other community organizations.
- Met Government officials with functions in the field of family violence.
- Met others involved in various aspects of the response to family violence, such as elder abuse and the granting of Emergency Protection Orders.
- Devised concrete steps to implement our recommendations, where appropriate.

This report sets out our conclusions and the reasons for them.

Plan of Report

In Part II of this Report, we discuss a number of topics, some of major importance and others that require special discussion.

In Part III, we describe proposed legislation, which will implement many of our recommendations. We believe that the Legislature, in addition to making specific provision for a number of important subjects, should make unequivocal statements of the public policy of Alberta in its response to the problem of family violence. We believe that the Legislature should state clearly that integrated and coordinated efforts are required from all agencies in order to make the response effective and that necessary programs should be mounted and maintained. In making those statements, the legislation, which we propose, goes beyond the work of usual legislative patterns, but the work of the agencies associated with the Government and of the community and agencies in the private sector, is hampered by lack of clear understandings on these points. The legislation that is enacted should say what it means.

The proposed legislation is also designed with a view to incorporating in one statute all the relevant law relating to the response to family violence so that those who want to know what it is are not hindered by the necessity of looking through the statute book and other sources in order to find it. There must be exceptions, of course: the *Family Law Act*, Bill 45, if enacted, for example, will require a court, in making parenting orders, to take family violence into consideration. This provision belongs in the *Family Law Act*. But, in general, there should be one statute. Our proposed legislation would make the *Prevention Against Family Violence Act* that one statute.

In Part IV, we set out the recommendations that we made in our March 31 Report and set out the steps we have taken towards implementation of each. We should say here that among those whom we consulted in preparing this Report we found very little criticism of what our recommendations say, though some were disappointed that they did not say other things.

Urgency of Establishing Premier's Council on Family Violence

It is imperative that the central agency responsible for overseeing Alberta's response to the problem of family violence be established as soon as possible. Its establishment will help to ensure that Alberta will address the problem in an integrated and coordinated fashion.

Therefore, if the proposed legislation is not to be enacted at the Spring 2004 Session of the Legislature, a self-standing statute, the *Premier's Council on Family Violence Act* should be enacted at the Spring Session and the Council should be activated as soon as possible thereafter.

Part II: Specific Topics

Introduction

In Part II, we discuss a number of specific topics. Four of them, Legislation, the Premier's Council, Information Sharing, and Integration and coordination of Response, are central to the implementation of our March 31 recommendations. The others also require exposition as separate topics.

Legislation

We repeat here some of what we have said in the General Introduction, Part I, about the proposed legislation.

We think that one Alberta statute should set out all Alberta statutory law that deals specifically with the problem of family violence, except for any provision that must necessarily be put somewhere else.

It is important that the people and Legislature of Alberta state the philosophical foundations and intellectual linkages of the societal response to family violence. These foundations and linkages should be made obvious to everyone who has anything to do with the legislation on the subject. Legislation should display the statutory provisions dealing with family violence as coherent parts of a comprehensive approach to the problem.

Whether or not the making of philosophical and intellectual statements is usually considered to be a function of legislation, we think that it should be in this case. The Legislature and people of Alberta should make a solemn declaration of the right of every family member to be free from family violence and should declare the objectives of family violence legislation.

Setting out all related statutory law in one place will be convenient for those who wish to find out what it is. But there is more involved than mere convenience, however important that may be by itself. Our extensive meetings with people in many centres in the province have made it clear that, for several practical reasons, the legislation about

family violence will not work efficiently unless it is put within the reasonable reach of service-providers and others, that is, the legislation will not work if the barriers to finding it and understanding it are too great.

If all family violence legislation should be in one statute, the next question is: what statute? There is already one statute that deals with aspects of family violence – the *Protection Against Family Violence Act*. Rather than move the contents of *PAFVA* to another statute, we think that the other necessary legislative provisions should be put into *PAFVA*, and that it should become an omnibus statute dealing with family violence, which name, we propose, should be changed to the *Family Violence Prevention Act*. Of course, this is not fundamental, and another statute could be used, but convenience favours *PAFVA*, and it appears to us to be an adequate vehicle.

The principal elements in the proposed legislation are as follows:

1. A preamble that first sets out as fundamental policies the support and preservation of families, and the right of family members to be free of family violence, and goes on to state the principal objectives of the response of the Legislature and people of Alberta to family violence.

   The purpose of the preamble is twofold. First, it states fundamental policies and objectives for all to see. Second, it will help courts and others to interpret the legislation in ways that are consistent with those policies and objectives.

2. Provisions establishing a Premier's Council on Family Violence and setting out its functions. We will discuss the Council under the heading "Premier's Council on Family Violence" below.

3. Provisions to promote working together by agencies involved in the response to family violence, including child protection, police services, Crown Prosecutors, Probation Officers, providers of court-mandated counselling or treatment services to abusive family members, schools and facilities prescribed by regulation (principally including hospitals and care facilities).

4. Provisions providing for the free flow of information among the agencies whenever there are reasonable grounds for suspicion either that family violence has occurred, with consequent risk of re-occurrence, or that family violence may occur, coupled with a

provision protecting the confidentiality of disclosed information in the hands of the recipient. We will discuss information sharing under the heading "Information-sharing" (pg. 16).

5. Provisions for better information for courts dealing with parenting, custody and access, including intervention or investigation by Child Protection. We will discuss this subject under the heading "Custody, and Access in Cases of Family Violence" (pg. 26).

Part III, "Proposed Legislation" describes the legislation that should be adopted and states the rationale for each provision. Much of it is new, in the sense that it has not been legislated. The provisions for Emergency Protection Orders and Queen's Bench Protection Orders are carried forward with some proposed amendments, which we think will improve the protection they give to victims of family violence and children.

Premier's Council on Family Violence

If the societal response to family violence envisaged in this Report is to be effective, someone must provide continuing and consistent monitoring and evaluation of that response and ensure that improvements are made as required. If that is no one's job, no one is likely to do it.

It is necessary that there be a continuing agency charged with the responsibility of doing the job. It is also necessary that the agency:

- be properly funded;
- have a high visibility that symbolizes the importance of responding effectively to the problem of family violence;
- command the respect and support of the ministries that are necessarily involved in the response; and
- be sensitive to community needs and command community support.

Alberta was a leader when it established the Office for the Prevention of Family Violence. The office, however, has a small staff and few resources, and its ability to reach out into ministries other than Children's Services is dependent upon the personalities involved at any given time. It is time for the province to do more. The Interdepartmental Committee on Family Violence has done useful work (its framework for counselling and treatment services will be referred to later in this report). However, it does not have the strength of structure and the dedicated resources that

are necessary to perform the continuing function we have in mind, though it is likely to have an important role in devising policy advice and implementing specific measures.

We have considered a number of possible structures for such a continuing agency. All have drawbacks. An agency within a ministry is not likely to have the visibility which is desirable and is more likely to be affected by cuts to the ministry's budget. A continuing commission established outside the ministries will not have a minister to take up its cause at budget time or when the implementation of its proposals is under consideration. Neither an agency within a ministry nor a community will have automatic standing and credence with all the ministries. An agency composed of officials may over time lose effective contact with, and understanding of, the grass-roots community organizations whose participation in the design and delivery of services at the local level is essential.

We have concluded that the most effective answer to the need for continuing oversight of the response to the problem of family violence would be a Premier's Council on Family Violence, constituted along lines such as the following:

- The Council would be established by legislation.
- The Council would consist of:
  - the Premier as chair, though not likely to be involved in the day-to-day business of the Council. One or more vice-chairs could be named by Order in Council with the expectation that they would usually preside at Council meetings.
  - the Deputy Ministers of the principal ministries involved in the response to the problem of family violence. These should include Children's Services, Health and Wellness, Justice, Seniors and Housing, and Solicitor General. They could include Learning and possibly others.
  - Members of the public appointed by Order in Council, to include members of community and provincial organizations involved in the response, including Aboriginals, as well as public-spirited citizens who are not involved in the response to family violence. The number of public members should not be less than the number of Deputy Ministers. Some process should be developed to ensure that those appointed will have the confidence of local communities.
- The Council would be supported by an administrative office in the Ministry of Children's Services or other ministry, headed by a director who would be the Chief Executive Officer of the Premier's Council.

We think that the Council should have the following functions:

- Arrange for research into responses to family violence in other jurisdictions and for the collection of statistics relating to the effectiveness of Alberta's response to family violence. The continuing assessment of outcomes of the response is essential if effective measures are to be taken.
- Increase public awareness of the problem of family violence and of the need to respond to the problem. Public awareness of the problem, and social attitudes towards the problem, have improved in recent years, but there is still a long way to go, and a more general social understanding that family violence is all too common and that it is unacceptable conduct would do more to minimize the problem than any remedial steps can do.
- Encourage service providers and other groups in each community to organize themselves for integrated responses to the problem of family violence, preferably with resources to provide for paid coordinators of local services. Effective inter-agency coordination and integration of services at the local level is the best guarantor of effective responses to family violence, but this requires encouragement and some resources. It is at the local service-delivery level that the response to family violence succeeds or fails.

We think that a Premier's Council so constituted will have the following advantages:

- The association of the Premier's name with the Council.
- Monitor Alberta's response to family violence on a continuing basis.
- Report annually on its activities and make recommendations for improvement.
- Will be highly symbolic: it will show that Alberta regards the response to the problem of family violence as something to be promoted at the highest political level. This is consistent with the Premier's recent identification of family violence as a major problem to be addressed by the government.
- The Council's high profile will make it more likely that funding will be maintained as an important priority.
- Making the success of the Council a responsibility of the Deputy Ministers will give the ministries a stake in ensuring that success and help to ensure that the recognition of the Council and participation in its work will be recognized by the ministries as an important function of each of them.

- Oversee the implementation of these recommendations, including funding.
- Public membership will keep the Council in touch with communities and their needs and shape the Council's responses in accordance with those needs.

There are two existing precedents. One is the Premier's Council on the Status of Persons with Disabilities. The other is the Premier's Council on Alberta's Promise. The proposed structure and the proposed activities of the proposed Premier's Council on Family Violence would give it broader and more concrete responsibilities.

We conclude this section by saying that, for the reasons given at the end of the General Introduction, Part I, that is it proves impracticable to enact general legislation about family violence at the 2004 Spring Session of the Legislature, a statute should be enacted at that session to establish the Premier's Council on Family Violence.

Information Sharing

Our March 31 report discussed at some length (pages 17-23) the need for a freer flow of information among the official agencies involved in the response to family violence. Agencies which have all available information are much more likely to make decisions that will prevent family violence in specific cases and will respond more effectively when family violence occurs.

The protection of privacy is a public policy objective. Prevention of, and effective response to, family violence are also public policy objectives. When the two public policies come into apparent conflict, it is necessary to arrive at a proper balance.

Allowing the official agencies to share personal information will derogate from the privacy of victims, children and abusers, but the derogation will be limited to those service-providers who are involved in the prevention of, or response to, family violence, in whose hands it will remain confidential. That is what is on one side of the scale. But, if information is not shared, victims may be at risk, with consequences ranging from present unpleasantness to permanent tragedy. We say that the balance is in favour of allowing agencies to communicate with each other, under an

umbrella of confidentiality, so that the response of each may be as effective as circumstances permit.

The collection and disclosure of personal information is governed by a web of legislation, the principal components of which are the *Freedom of Information and Protection of Privacy Act* and the *Health Information Act*. The legislation gives a high degree of priority to the values involved in privacy by emphasizing confidentiality of personal information. It makes exceptions to confidentiality, but the exceptions are often limited and require making difficult judgments to decide whether the general confidentially rules apply or whether the specific circumstances fall within one of the numerous and often obscure, and those who make those judgments are likely to be conscious that an error in favour of disclosure will bring adverse consequences. An exception that permits the disclosure of personal information if it will minimize an imminent risk to someone's life or health, for example, requires a judgment that life or health is endangered, and that the danger is imminent. These are judgments that are likely to be wrongly made under pressure of circumstances. An exception that permits information to be used for the purpose for which it is obtained may require judgment as to what is inside that purpose and what is not, and an exception for a common program may require judgment as to whether an action involving two services constitutes a "program". An exception that permits information to be given to a law enforcement body to assist in an investigation may require judgment to decide whether there is an "investigation" already on foot.

Obtaining consent is an appropriate and useful way to proceed. However, that is not always feasible. We have been told of inter-agency conferences that were held in the past but cannot be held now because they would require a web of consents from parents to authorize each agency to take part. Information about family violence is likely to include personal information not only about an abused family member and child, but also personal information about an abusive family member, who is not likely to consent to disclosure even if an approach asking for consent were practicable.

The result is that the flow of information among the official agencies is in practice highly inhibited. Everywhere we have gone in the province, service-providers have said that they are not able to disclose or receive information they need. There is a further problem that, because the legislation is scattered and exceptions so numerous, service-providers are not able to memorize them all, so that there are inhibitions of perception as well as inhibitions by what the legislation actually says. Laudable

efforts have been made to provide them with adequate analytical tools to make disclosure decisions, but the present information-sharing regime does not work.

What is needed is one legislative provision in one place that will make it unnecessary for service-providers to master complex legislation and complex criteria for the disclosure of information. A section in the *Protection Against Family Violence Act* would be sufficient. It should say that an agency may disclose to another agency personal information about a family member or child that provides reasonable grounds for suspicion that family violence has occurred, with consequent risk of re-occurrence, or simply that it may occur. A service-provider would still have to decide whether there are reasonable grounds for suspicion, but that is a reasonably simple criterion. The provision should say that the recipient of such information may use it in the response to family violence but otherwise holds it subject to the applicable rules of confidentiality.

The confidentiality legislation should be amended to provide that disclosure may be made under *PAFVA*. We have included a provision that would provide for limited information flow and the preservation of confidentiality in the hands of recipients as s.1.4 in Part IV, Proposed Legislation.

Towards an Integrated and Coordinated Response To Family Violence

Introduction

The community response to the problem of family violence cannot be effective and efficient unless it is integrated and coordinated. Integration and coordination is needed at all levels, but it must culminate in the delivery of integrated and coordinated services at the local level by local service-providers.

The Premier's Council on Family Violence that we have recommended will provide for coordination and integration at the centre, and one of its principal functions will be to promote integration and coordination of services at the local level. This section will deal with measures that have direct effect at the local level. One is the flow of information among agencies involved in the response to family violence. The other is the

ways in which agencies may better work together. Of course, information flow is integral to working together, but it is not the whole of that subject.

The response to family violence cannot be integrated and coordinated unless:

- there is a free flow of necessary information among the various agencies involved in the response to family violence; and
- the various agencies understand their respective functions and the functions of the other agencies and work together to provide an integrated and coordinated response to specific incidents of family violence.

We have already discussed the sharing of information among agencies.

Working together in the community

Agency services in the response to family violence, in both the private and public sectors, are delivered by individuals at the local level. Coordination and integration of services, if it is to take place, must have effect at the local level.

Inter-agency organization is common in Alberta. Local representatives of agencies in both the public and private sectors commonly meet to exchange information and views. Some of the inter-agency organization meetings develop further into the creation and carrying on of specific projects, which may be ad hoc or continuing, and which may deal with family violence or with other subjects of common interest, such as youth problems and drug problems.

One example of a local inter-agency project is centred at Killam. A social worker and police officer attend family violence calls that come to either the RCMP detachment or the Flagstaff Family and Community Social Services. Another example is the Drayton Valley Comprehensive Family Violence Institute, which runs programs for men, women, adolescents and families on preventing and dealing with family violence. A very ambitious program is that of the Lethbridge Domestic Violence Action Team, which has for years held periodic meetings of public and private sector agencies. DVAT has developed protocols for the official agencies that describe their functions in some considerable detail for the benefit of their own workers and other agencies. Included in DVAT's work are arrangements under which social workers and an active Victim Services

Unit work from the Lethbridge Police Service police station. This is a highly effective response to the problem of family violence.

The Calgary Domestic Violence Court was inspired by local groups. Police, prosecutors, judges, probation and Child Protection work together. So do HomeFront caseworkers, who provide support for victims at all stages and link them to the combined effort, and so do community services who provide counselling and treatment for abusive partners. The Edmonton Domestic Violence Court was also inspired by local people and involves coordination and integration of services.

It is important that communities, including official agencies and private-sector agencies, work out their own ways of dealing with their own problems. But it is too much to expect that they will inevitably do so. Agencies have to focus on their own functions. Getting together to organize for providing integrated and coordinated services takes people's time and energy, which are limited resources. Much comes down to what amounts to volunteer work, and too often this means that everything is "STP", a term that was explained to us as meaning "the Same Ten People".

If local initiatives are to be undertaken and successful, an encouraging and supportive environment must be created. The Premier's Council on Family Violence that we envision would help to do this: it should have as one of its objectives the encouragement of local initiatives, and it should have funding to provide a paid coordinator to facilitate local initiatives. In addition, the legislation which we propose in Part III includes a provision that the Minister of Children's Services may provide programs to give effect to coordination and cooperation among agencies and to encourage the establishment of local organizations to bring about such coordination and cooperation.

We think also that it should be made clear to the service providers of the official agencies at the local level that it is agency policy to get together with other agencies to provide integrated and coordinated service. We now turn to that subject.

Agency policy statements ("protocols")

Integration and coordination of responses to the problem of family violence must, as we have said, take effect at the local level. Unless the individual service providers get together for that purpose, there will be let stand integration and coordination.

However, we think that individual service providers are much more likely to get together at the local level if they clearly understand that it is agency policy to work with other agencies at the local level to provide integrated and coordinated service. As part of agency policy, it should be understood that working together with others is part of each service-provider's job.

Therefore, we think that it would be very useful for the agencies at management level to adopt written, province-wide policies that do two things. The first is to set out each agency's functions in sufficient detail that other agencies will know what to expect from that agency and how to make the functions of all of the agencies to fit together in an integrated and coordinated service. The other is to set out the agency's policy of working together with other agencies to provide integrated and coordinated service and to make it clear that doing so is part of a service-provider's job so that time may be spent on it.

We have approached the CEOs of the Child and Family Services Authorities (CFSAs), the Alberta Association of Police Chiefs, the Alberta Solicitor General's Deputy Minister (for Community Corrections) and the Chief Crown Prosecutor with suggestions that they adopt such policies. We have provided sample Protocols to them based on the Lethbridge DVAT Protocols, with additional materials relating to working to together. CFSA CEOs are supportive of the Protocol and that they are continuing to work on implementation issues. We attach as Appendix A a sample Protocol, which is a revision by Community Corrections of the draft we sent them, so that it is in their view a satisfactory statement of best practices.

The draft Protocols, which we sent out, were in some respects too situation-specific, and they require either revision or substitution so that they will allow for regional differences.

It is our hope that Protocols giving information about the functions of the services and providing for the coordination and integration of service

responses to family violence by members of those services at community levels will be adopted by the official services. Then, these could form a package that would give greater understanding of the functions of the services and of the need for coordination and integration of services.

Community Corrections has approved a protocol. Child Welfare Authorities have given general approval to adopt such a protocol. The Alberta Association of Chiefs of Police will consider the adoption of a protocol at their forthcoming annual meeting. We have not yet received a final response from the Crown Prosecutors.

Failing the adoption of protocols by any of the major agencies, we hope that they will actively pursue other, equally effective, ways of promoting the coordination and integration of services.

Assessment and Treatment of Abusive and Abused Family Members

One necessary component of an integrated and coordinated response to family violence is a program for treatment or counselling of both abusive family members and abused family members. This is exemplified by the Calgary Domestic Violence Court and the HomeFront project. Because treatment and counselling facilities are available, the Court is able to make it part of a package of sanctions designed to break the cycle of violence. Such facilities should be available wherever it is practicable to provide them.

The Provincial Family Violence Treatment Program Framework dated August 27, 2003, addresses this need. It was prepared by a committee of Alberta Health and Wellness (including the Alberta Mental Health Board and the Alberta Alcohol and Drug Abuse Commission), Alberta Justice, Alberta Solicitor General, Alberta Children's Services, and Alberta Aboriginal Affairs and Northern Development. It provides for the following.

- Staged implementation of a Treatment Program, commencing in Calgary and Lethbridge in 2004/2005, going on to Edmonton and Red Deer in 2005/2006, and expansion in 2006/2007 to other communities according to needs to be established by consultation.
- Assessment, treatment, rehabilitation and follow-up services for abusive and abused family members "who are mandated for such

services through the criminal justice process or under the *Protection Against Family Violence Act*, the provision of which is to be ensured by the Alberta Mental Health Board through contractual agreements with regional health authorities and other service providers.
- Enforcement and monitoring of compliance with court-ordered treatment.
- Rigorous evaluation and research to ensure that the program is effective.

This program should be implemented. Secure funding is necessary. The proposed budget rises from $2.6 million in the first year to $7.6 million in the third phase.

We have three concerns.

- The treatment should be directed towards changing abuser's behaviour rather than following a medical model, as might be suggested by the involvement of the Alberta Mental Health Board. There may be substantial danger to classifying abusive behaviour as a mental health problem.
- The Framework includes victims who are mandated for treatment. The *Protection Against Family Violence Act* does indeed provide that a Queen's Bench Protection Order may include "a provision requiring the respondent, and any other family member that the court considers appropriate, to receive counselling". However, while we have no doubt that counselling should be available to abused family members, we have reservations about a power to order a family member who has not committed an offence to receive counselling on the sole grounds that the family member has been subjected to family violence.
- The Framework applies only to court-mandated treatment. Our understanding is that many abusive family members attend counselling and treatment without a court mandate, often under other pressures such as the prospect of losing a partner and family. It may be that such persons should be left to find treatment and pay for it completely, but we think that the interest of society in breaking the cycle of family violence is sufficient to make some assistance desirable, even if it is only to identify appropriate available facilities.

Abuse of Older Adults

Introduction

Our March 31 report did not make specific reference to elder abuse. When preparing that report, we considered that family violence against older adults is included in the general subject of family violence. However, it is a subject that has unique aspects, and it should be given specific attention.

Legislature Action and the Premier's Council on Family Violence

Responding to the specific problems of elder abuse has been recognized as an important area of Alberta's public policy. In 1996, the Speech from the Throne expressed the intention of the Government to expand regional access to government services for seniors, and develop a provincial strategy to educate Albertans about the abuse of elders, including a 1-800 reporting line. In 2000, the Legislature adopted a resolution urging the government to:

- broaden the mandate of the Interdepartmental Committee on Family Violence to elder abuse so that its functions are to:
  - educate and further raise the awareness of Albertans about this serious problem for seniors;
  - support current government and community initiatives and support improvements on them if needed;
  - identify gaps in legislation and services to seniors in areas where they might be at risk.
- ensure that the Committee has adequate resources to handle its expanded role as advocate for seniors in Alberta.

The mandate of the Premier's Council on Family Violence should specifically include the functions specified in the Legislature resolution. If the Interdepartmental Committee on Family Violence is to assist the Premier's Council with policy advice and by implementing specific measures, that function should also extend to the response to elder abuse.

Amendments to the *Protection Against Family Violence Act*

Two amendments to should be made to PAFVA.

Definition of "family member"

The first amendment relates to the scope of *PAFVA* in relation to elder abuse. Family violence is defined as violence against a "family member". One limb of the definition of "family member" is:

> "persons who reside together and are related to one or more persons in the household by blood, marriage or adoption or by virtue of an adult interdependent relationship."

This definition covers the case in which an older adult is residing together with an abusive family member. Elder abuse, however, can and often does occur where an older adult is not living in the same household as an abusive family member. The definition of "family member" should be expanded to include non-residential family members. One way of doing this would be to add an additional item to the definition so that "family member" would include:

> (i) "a person,
> (ii) a child, grandchild, step-child, niece or nephew of the person, and
> (iii) a spouse or adult interdependent partner of any of the persons referred to in paragraph (ii)."

We think it desirable to list the family relationships here, as elders may rely on any of the listed categories or be subjected to abuse by any of them.

S. 1.1(c) of the Proposed Legislation, Part III, gives effect to this view.

Application for Emergency Protection Order

The second amendment is designed to get around a practical difficulty. Under s. 6 of *PAFVA*, an application for an Emergency Protection Order may be made by the abused person. It may also be made on behalf of the abused person "with that person's consent, by a person or a member of a category of persons designated by the regulations", that is, a police officer

or social worker. It may also be made by "any other person on behalf of the abused person with leave of the judge".

The practical difficulty is that an older person may be somewhat confused, so that a police officer or social worker does not feel able to rely on a consent given by the older person to making an application for an EPO. That means that no application can be made, because the third alternative, "any other person" excludes the police officer and social worker. This is inappropriate. If a police officer or social worker thinks that an EPO should be applied for but there is doubt about the validity of the other person's consent, they should be able to apply on the same basis as "any other person", that is, with leave of the judge or justice of the peace who hears the application. The police officer or social worker would have to satisfy the judge or justice that there is good reason for making the application without consent, which is a sufficient safeguard.

Custody and Access in Cases of Family Violence

Introduction

In our March 31 Report (pages 39-41), we made a number of recommendations designed to improve the quality and supply of information to courts making decisions as to custody and access to a child after family violence has occurred. We noted that the primary concern must be to promote the best interests of the child, the first of which is the child's safety and freedom from physical abuse. We noted (pages 29-32) that a purely adversarial system is not wholly suitable for the determination of custody and access. The possibility that decisions negotiated between parents will involve considerations other than the best interests of a child, the frequent incompleteness of information before the court, and the lack of an official, such as a Crown Prosecutor, to receive relevant information and bring it to the court's attention, stand in the way of the making of satisfactory decisions.

Two preliminary points

Effect of the proposed establishment of a Unified Family Court

The recommendations we made in our March 31 Report, and what we say in this report, are not dependent on any specific form of court structure. They apply to the present structure under which custody and access are dealt with by the Queen's Bench in some cases and by the Provincial Court in other cases. They will apply equally if the proposed Unified Family Court is established with jurisdiction to deal with custody and access.

The establishment of a Unified Family Court should improve the situation with respect to custody and access where family violence has occurred. Problems arising from the present division of jurisdiction should disappear. Improved services should be attached to the Unified Family Court. Information should flow more freely between courts.

As we will note below, it is our understanding that much of the thinking that is going on in preparation for the Unified Family Court is consistent with our recommendations.

Change in terminology under the proposed Family Law Act (Bill 45 of 2003)

Bill 45 talks of "parenting orders" and "contact orders" rather than "custody" and "access" orders. Philosophical changes underlie the changes of terminology. However, "parenting orders" will give "parenting time" to a parent (or to each parent sequentially) during which that parent will have the day-to-day care of the child and supervise the child's daily activities, and "contact orders" will provide for contact between a parent and the child by visits or other forms of contact. Insofar as family violence is or may be involved in decision-making, it appears to us that the considerations that now apply to making information available to courts making custody decisions will apply to parenting decisions and that the considerations that now apply to access decisions will apply to contact decisions.

Investigation report

In our March 31 Report, pages 39-40, we recommended, in essence, that the procedure that has been established in the Edmonton area under Queen's Bench Family Law Practice Note 8 be extended throughout the province and to cover all family violence rather than restricted to cases of alleged sexual abuse as the wording of Practice Note 8 suggests. Under the Practice Note 8 procedure, a party who intends to allege sexual abuse must give notice of intention. The court can then request a senior social worker to investigate and report, with police assistance.

In principle, we think such an investigation service should be made available throughout the province. It was suggested to us on behalf of Child and Family Service Authorities, however, that the procedure would sit better if integrated into the *Child Welfare Act*, where the director of Child Welfare would have the supporting powers and abilities. We therefore propose that the legislation we propose contain a provision that the court may make a request for an investigation to a director of Child Welfare which will be deemed to be a report under s. 4 of the *Child Welfare Act*, which has the consequence that the director is obliged to investigate and make a report to the court. This is similar to the current procedure under which the court can refer a young person to child welfare for an assessment under s. 35 of the *Youth Criminal Justice Act* (Canada).

Two reservations were noted by the CFSAs. One was that it is unlikely that skilled personnel can be made available everywhere in the province, particularly if police assistance is needed. The other was that overuse of the procedure would divert resources from other child welfare services.

With respect to the latter possibility, we agree that such requests should be made only where there is strong reason for making them and should not become a matter of course, thus diverting resources from other functions.

The proposed legislation would therefore provide two safeguards.

- Before making such a request, the judge would have to be satisfied that the parties before the court may not adequately protect the interests of the child involved in the proceeding.
- Requests should come through a judge designated by the court for the purpose.

S. 1.5 of the Proposed Legislation in Part III provides for the procedure we have suggested. It is our understanding that a procedure under which a court may obtain an investigation by a social worker is under consideration for the Unified Family Court.

Intervention by child welfare authorities

We recommended in our March 31 Report (pages 30, 40) that child welfare authorities be allowed to intervene in custody and access disputes. Child welfare information is often not available to the court. A particular example of this deficiency, which has been mentioned by several people, is that Child Welfare may intend to apprehend a child if custody is given to a parent whom they see as an abuser. While there will, of course, be cases in which Child Welfare is not in contact with the situation or does not know that custody is being decided, the authorities should be able to come forward and inform the court in cases that they do know about.

S. 1.5 of the Proposed Legislation in Part III provides for intervention by Child Welfare in custody and access disputes. Further discussion of the issue is provided in the Rationale for the proposed provision. We understand that the Court of Queen's Bench is in the process of adopting a Practice Note that would allow intervention by Child Welfare.

Family violence screening in court intake process

In Edmonton and Calgary, Family Court Counsellors screen for family violence; do a risk assessment if a case may be one of family violence; and help to prepare safety plans if risk is high. This applies only in the Family Division of the Provincial Court, where Family Court Counsellors see unrepresented parties to custody and access proceedings. We recommended in our March 31 report that the Family Court Counsellors, or other officials performing the intake function, file reports with the court in such cases, and that the procedure should be standard throughout the province.

If the proposed Unified Family Court is established, the services of Family Court Counsellors should be available in all custody and access matters, not merely those that are now dealt with in Provincial Court. We understand that consideration is being given to having screening done, and steps taken to protect victims, in all UFC base points, which would be an excellent idea.

S. 1.6 of the Proposed Legislation, Part III, provides for the functions we have described.

In our March 31 Report, pages 30, 40, we stated reservations about mediation in cases in which family violence has occurred. Everything we have heard since suggests that the position should be stated more strongly: rarely, if ever, should an abused partner be required to engage in mediation with an abusive partner because fear that an abused partner has for the abusive partner is extremely likely to lead to a power imbalance that makes mediation contra-indicated. It is our understanding that a proposal for waiving an abused partner through any mediation process is under consideration in connection with the proposed Unified Family Court.

Representation of children

A court dealing with a custody or access case should, where family violence has occurred and there is doubt that the parties before the court are willing or able to protect the child's interests adequately, should be able to appoint a lawyer to represent the child's interests. The lawyer's function would be to ensure that all available information is presented to the court and see that all relevant considerations are pointed out to the court.

This is a restricted function. Two other models relevant to Alberta go much further. These are the New Zealand and Ontario models.

Under the New Zealand model, there are almost universal appointments for children in custody disputes. Counsels from the private bar are appointed. Their function is to present the child's wishes to the court, though they can point out that the child's wishes are not in the child's best interests. It is said that this practice has brought about a considerable change in culture, as, under the influence of court-appointed counsel for children, litigants have come increasingly to recognize that they must look to the child's best interests rather than their own interests.

Ontario's model is different. Cases must be referred by the courts, which make references in about one-third of the cases, the court being satisfied in the other cases that the child's interests are being properly looked after. Representation, which is representation of the child's interests rather than the child's wishes, is provided by the Children's Lawyer, who, however, has significant discretions. They can reject a reference altogether. They

have a social work component and may decide to provide social work services, legal services, or both. They may provide services from their own staff or by retaining outside social workers or lawyers.

Our concern is about family violence cases, in which there is a greater than usual risk that a child's interests will not be properly protected by the child's parents. We think that the court should be able to direct that a lawyer be appointed for a child in such a case. An appropriate office should perform the function. It seems to us that an appropriate office would be Legal Aid's Family Law Office, which could provide either a staff lawyer or a private-bar lawyer, and which would have access to social services to provide them with information. The emphasis should be on representing the child's best interests, though the lawyer should put the child's wishes before the court.

The Proposed Legislation, under the heading Representation of Children makes provision for the legal representation of children in custody and access disputes where family violence has occurred or is suspect.

Safe exchange and supervised visitation

This subject is discussed in our March 31 Report at pages 31-32, 41. Where there is risk of family violence, the delivery of a child by an abused partner to an abusive partner gives rise to a high risk of further violence. If media reports are accurate, that is what occurred in the recent double-murder and suicide tragedy at Red Deer. Arrangements sometimes made for an exchange at a McDonald's or a police station are not adequate, and arrangements under which a visit is supervised by family members or other untrained persons are not adequate. Some appropriate arrangement should be available when a court makes an order for safe exchange or supervised access.

Such arrangements are rare in Alberta. The YWCA-Sheriff King Home in Calgary has a program under which a custodial parent delivers a child to shelter staff, the access parent has a visit with the child, and shelter staff deliver the child back to the custodial parent, with no contact between them. This is as well as can be done in such unhappy situations.

Satisfactory arrangements for safe exchange and supervised access cost money. The possibilities should, however, be canvassed. Some women's emergency shelters would have the physical and staff facilities to provide both. Others might be able to form partnerships with community groups

to provide them. What is needed are premises which allow for separate arrivals and departures, staffed by independent supervisors, and have child-friendly rooms to make a visit meaningful.

S. 1.9 of the Proposed Legislation, Part III, provides that the Minister of Children's Services may provide programs for supervised visitation and supervised exchange.

We understand that the provision of safe exchange and supervised visits is under consideration for the Unified Family Court.

Amendments to the *Protection Against Family Violence Act*

Introduction

Parts I and II of this report provide for substantial additions to the existing *Protection Against Family Violence Act*, which will make it a general statute relating to family violence. The Proposed Legislation in Part III incorporates those provisions, which will not be referred to again in this section.

The existing *Act* deals primarily with Emergency Protection Orders and Queen's Bench Protection Orders. This section deals with amendments to make EPOs and Protection Orders more effective. These are included in the Proposed Legislation, Part III. This section also provides for a change in the name of the *Act* to reflect its broader function.

Name of the *Act*

The additions set out in the Proposed Legislation, Part III, will transform the *Act* into an act for the prevention of family violence before it occurs, to the extent that it can be prevented, and for the prevention of recurrence of family violence where it has occurred. We think it should be called the *Family Violence Prevention Act*.

Abusive behaviour that is not violent

Much controlling or abusive behaviour does not fall within the ordinary meaning of violence, but should be treated in much the same way as

family violence. *PAFVA* should be amended to include such behaviour in the grounds for EPOs and POs. A definition of "abuse" should be inserted, and, where necessary, the *Act* should refer to "family violence or abuse". The Proposed Legislation, Part III so provides.

Threshold requirements for EPOs

In order to grant an EPO, a justice of the peace or judge must find two things. One is that family violence has occurred. The other is "that, by reason of seriousness or urgency, the order should be granted to ensure the immediate protection of the claimant". This wording suggests that an EPO cannot be granted unless an abuser has access to the victim and is likely to engage in violence almost immediately and it has been interpreted this way, so that, for example, the fact that an abuser is in custody, or the fact that an abuser, though on his way, has not yet reached the area where the victim resides, means that an EPO will not be granted.

The test should be broadened somewhat, so that findings that family violence has occurred and that a family member is at risk would be sufficient. While an EPO may impose hardship upon an alleged abuser after only one side has been heard, the need for protection of victims of family violence and abuse should outweigh the inconvenience to respondents. The Proposed Legislation, Part III, so provides.

Sanction for breach of an EPO or PO

PAFVA does not prescribe any penalty for the breach of an EPO or PO. The victim may apply to commit the abuser for contempt of the order, but this is not an efficient remedy. S. 127 of the *Criminal Code* makes a breach of an order an indictable offence, which is a useful remedy in serious cases, but which is not proportionate to a minor non-violent breach and is therefore not likely to be invoked in such cases.

A breach of an EPO or PO should be made a provincial offence, so that lesser punishments can be imposed for lesser breaches. However, if that is done without more, the *Provincial Offences Procedure Act* will apply, which will in turn make the relevant *Criminal Code* provisions apply. S. 495 of the *Code* gives a peace officer power to arrest without warrant for an indictable offence if the peace officer has reasonable and probable grounds for believing that the offender has committed the indictable offence. However, in relation to non-indictable offences, s. 495 of the *Code* gives a

peace officer power to arrest without warrant only if the peace officer finds the offender committing the offence. We think that the advantages of a power to arrest without warrant on reasonable and probable grounds where there is considerable danger to a victim, which is available now under the combined effect of s. 127 and s. 495, outweigh the advantages to be gained from gaining a more flexible set of penalties for less serious cases.

After an instructive dialogue with James R. Jacques, Chief Crown Prosecutor at Fort McMurray, we think that the best thing to do is:

- first, to provide that a breach of an EPO or PO is a provincial offence;
- second, to provide that an arrest for a breach may be made without warrant on reasonable and probable grounds for belief that a breach has occurred; and
- third, to provide that the *Criminal Code* provisions otherwise apply; that is, to follow *POPA* except for the extended arrest power.

We think, however, that consideration should be given to possible constitutional problems before such provisions are adopted, as we do not have time to come to firm conclusions an their constitutionality. If the power to arrest on reasonable and probable grounds is not available on constitutional grounds, we would prefer to stay with s. 127 of the *Code*.

Service of protection orders

If the responsibility for serving an emergency protection order on an abusive family member were the responsibility of the abused family member, the latter would either have to serve the order personally, with consequent risk of violence at the time of service, or arrange and pay for service by someone else, which may be beyond both the emotional and financial capacity of an abused family member. Provision is therefore made for effecting service by the police. The same considerations apply to the service of a Queen's Bench protection order, and service should be effected by the police.

A general evaluation of EPOs and POs

We think that the time has come to assess the utility and effectiveness of EPOs and POs with a view of ensuring that they work as well as possible. We cannot do this, but suggest that arrangements be made accordingly.

Conclusion to Part II

This concludes our discussion of a number of specific subjects that need to be addressed in order to achieve an integrated and coordinated response to the problem of family violence. Part III, Proposed Legislation, provides for implementation of some of the discussion. Part IV, Implementation of Recommendations in March 31 Report, makes recommendations on other subjects.

Part III: Proposed Legislation

Introduction

Part III sets out proposals for legislation implementing proposals made in Parts I and II of this report.

Name of Act	
Current	The *Act* is entitled *Protection Against Family Violence Act*
Proposed	Change the name to *Family Violence Prevention Act*
Rationale	The proposed additions to the *Act* will change its nature. Instead of merely providing a form of protection against family violence, the *Act* will incorporate almost all provincial legislation that deals with family violence. It will accordingly be an act for the prevention of family violence, to the extent possible, and the prevention of recurrence where family violence has occurred.

Preamble to Act	
Current	The *Act* has no preamble
Proposed	Insert a preamble to the effect that: ▪ The family is the basic unit of society and its well-being should be supported and preserved. ▪ Every member of a family has a right to be free of family violence. ▪ The objectives of the response of the Legislature and people of Alberta to family violence include the following: • the elimination of family violence to the extent possible. • ensuring the safety of abused family members and children. • ensuring that abused family members and children are given counselling and emotional support; and have places to live and sufficient economic support to obtain the necessities of life and maintain their independence. ▪ Ensuring that courts dealing with parenting or custody of, or access to a minor: • will have before them all information and submissions that they need in order to make proper dispositions according to law; and

	• will have available to them facilities necessary to protect the safety of abused family members and children. ▪ Ensuring that abusing family members who commit criminal offences • are convicted and punished where appropriate; • are prevented or deterred from committing further family violence; and • where appropriate, are given treatment designed to break the cycle of family violence and prevent its recurrence.
Rationale	See Part II of this report, Legislation. The people and Legislature of Alberta should, through this *Act*, declare that the preservation of the family and the freedom of family members from family violence are fundamental values, and should set out in legislative form the objectives that should underlie the response to the problem of family violence. The preamble has the additional purpose of guiding the interpretation of the *Act* to support these values and achieve these objectives.

Organization of Act

Current	S. 1, 2-14 The *PAFV Act* provides for Emergency Protection Orders, Protection Orders and Warrants Permitting Entry in cases of family violence.
Proposed	▪ Insert a heading "Part 1" before s. 1 (the definition section). ▪ Insert a heading "Part 2" after s. 1 and before s. 1.1 (which is provided for below). ▪ Insert s. 1.1 to s. 1.9 after the heading "Part 2". ▪ Insert a heading "Part 3" before s. 2 and insert s. 1.10 (which is provided for below). ▪ Insert a heading "Part 4" and add amendments to later sections as set forth below.
Rationale	A number of provisions relating to family violence situations will be added to the *Act* as Part 2. Part 3 will be added to establish the Premier's Council on Family Violence. The provisions and section numbers of the existing *Act*, subject to some amendments, will be carried forward as Part 4. The result will be that all legislation dealing with family violence will be in one statute to the extent practicable.

Definitions	
Current	The proposed definitions are new.
Proposed	Add the following definitions to s. 1: ▪ Define "abused family member" to mean a family member against whom another family member has committed family violence or abuse. ▪ Define "abusive family member" to mean a family member who has committed family violence or abuse against another family member. ▪ Add an additional item to the definition of "family members" to include: • a person; and • a child, grandchild, step-child, niece or nephew of the person, or a spouse, common-law spouse or adult interdependent partner of any of them. ▪ Define "abuse" to mean any conduct of a family member, other than family violence, that has, or is intended to have, the effect of controlling or exploiting another family member by neglect, intimidation, inducement of fear or by inflicting pain. ▪ Define "agency" to include: • a police service; • a director under the *Child Welfare Act*; • a Crown Prosecutor; • Community Corrections; • a person or body which provides counselling or treatment services to an abusive family member pursuant to an order or direction of a Court; • a board or private operator of a school under the *School Act*; • a facility prescribed by regulation. Substitute "family violence or abuse" for "family violence in s.1(i), s. 2, s. 4, s. 11.
Rationale	▪ The definitions of abused family members and abusive family members are added for convenience only. ▪ The addition of item 3 to the definition of family member is intended to include non-resident family members in "family members" for the purposes of Emergency Protection Orders and Queen's Bench Protection Orders, and to ensure that persons in the specified relationships will all be included. This is primarily to allow older adults to obtain protection against non-resident family members, but it will apply to other family relationships as well. ▪ EPOs and QB POs should be available in cases of abusive

	conduct that does not involve actual violence. The definition of "abuse" is added. Provision is made to amend the sections where "abuse" as well as "family violence" should be dealt with. See Part II of this Report, abusive behaviour that is not violent. ▪ The definition of "agency" is intended to include the major providers of services rendered in response to family violence or intended to prevent family violence which are Government agencies or agencies associated with the Government. It would be expected that categories of hospitals and care-giving institutions would be prescribed by regulation as outlined above.

Coordination and Integration of Responses to Family Violence

Current	S. 1.2 is a new provision
Proposed	Provide that an agency or an agent or employee of an agency which performs any function in response to family violence or in order to prevent family violence: ▪ must have regard to the desirability of working together with all agencies involved in the response at all levels to achieve the objectives set out in the preamble to the *Act*; and ▪ may make provision for staff and workers in these agencies to obtain training and information about the special problems of family violence and the appropriate responses to it, and facilitate meetings and other interactions among service providers for that purpose.
Rationale	Coordinated and integrated responses are essential for services to respond efficiently and effectively to the problem of family violence. It is imperative that services work together to provide coordinated and integrated responses. While there are sterling examples of the various services working closely and effectively together in Alberta, too often they work in isolation from each other, thus making the overall response to family violence much less effective. While legislation does not usually include administrative directions and authorizations, it is necessary for this *Act* to do so in order that the responses to family violence may be efficient and effective. Without it, the good intentions of conscientious and able people have not been as effective as they must be in order to meet the challenge.

Provision of services for a coordinated and integrated response to family violence

Current	There is no express legislative authority for programs for cross-ministry coordination and cooperation in the work of the agencies involved in the response to family violence. S. 1.3 is a new provision.
Proposed S. 1.3	The Minister of Children's Services may provide programs to: ▪ give effect to coordination and cooperation among agencies; ▪ encourage the establishment of local organizations to bring about such coordination and cooperation.
Rationale	This is an administrative authorization not usually found in specific statutes. This provision is an additional measure to improve the coordination and integration of services in the response to family violence. One reason it is needed is that it provides for programs involving more ministries than one. More important, the existing system has not, with minor, though important exceptions, resulted in such programs, so that new impetus is needed.

Sharing of information among agencies to improve the response to family violence

Current	S. 1.4 is new. The effect of present legislation in relation to the sharing of information among the agencies involved in the response to family violence is often restrictive and more often unclear, thus inhibiting the disclosure by one agency to another and derogating from the effectiveness of responses to family violence or its prevention.
Proposed	Provide that an agency may disclose to another agency personal information relating to a family member or child that provides reasonable grounds for suspicion that family violence ▪ has occurred, with consequent risk of re-occurrence, or ▪ may occur. Provide that a police officer must notify Child Protection if a child is present in a residence in which the police officer has reasonable grounds for suspicion that family violence ▪ has occurred, with consequent risk of re-occurrence, or ▪ may occur.

	Provide that an agency to which information is disclosed under this Part ▪ must not use the information for any purpose but responding to family violence or preventing family violence; ▪ must not disclose the information to any other person or agency except as authorized by this *Act* or another enactment. Add disclosures authorized by proposed sections of the *PAFV Act* to the list of disclosures that may be made under *FOIPP, HIA*, the *Child Welfare Act* (though the addition to FOIPP will be sufficient when Bill 24 is proclaimed) and the *Alcohol and Drug Abuse Act*.
Rationale	See Part II of this Report, Information-sharing Information about a family is needed for an adequate response to family violence. If a single agency can look only to whatever information it can itself collect, its response will be hampered, and agencies cannot provide a coordinated and integrated response unless they share information. The proposal is intended to make available to agencies all information from likely official sources. The two purposes of the proposal are; ▪ to enable a single agency or group of agencies to make adequate responses to specific instances of actual or potential family violence; and ▪ to ensure that the shared information is used only for responses to family violence and that its confidentiality will be protected if disclosure is not necessary for that purpose. For example, police services and prosecutors may need to have Child Protection's information in order to make appropriate decisions about charges and prosecutions, and Child Protection may need their information to make appropriate decisions about children. Child Protection, police services and probation need to know about breaches of no-contact orders so that appropriate responses may be made. The proposal would permit the cross-agency disclosure of such information for limited purposes. FOIPP and HIA allow some information flow. But the categories of permissible disclosure are limited. FOIPP, for example, authorizes disclosure to a police service to assist in an investigation (which does not seem to cover disclosure by an initiating report and may not cover disclosure for use in making a decision whether or not to release an offender); or under a common or integrated program or service (which would cover

	something like a joint police-service/Child Protection investigating team, but seems to require a formal program); or if the disclosure will minimize an imminent risk to someone's health or safety (which is a high threshold). As well as removing actual legal barriers, the proposal would help to remove the perceived barriers resulting from doubtful legal interpretations and from individuals' unwillingness to take the risk of finding that disclosure of particular information was not authorized by law. FOIPP has made people cautious about sharing information. Great efforts are being made to minimize the perception problem by disseminating information to service providers, but the proposed s. 1.4 would provide a relatively simple test service providers could more easily comprehend and feel safe in acting upon. Basically, the proposal is intended, so far as legislation can do so, to substitute an effective and relatively simple information-sharing regime for one that does not work.
Custody and access disputes where family violence has occurred: intervention by child welfare	
Current	S. 1.5 is new. A director of child welfare has no standing to intervene in a custody or parenting proceeding in either the Queen's Bench or the Provincial Court.
Proposed	Provide that a director of child welfare may intervene in a custody/parenting or access/contact proceeding in either the Queen's Bench or the Provincial Court (or the proposed Unified Family Court) if the director has reasonable grounds for suspicion that family violence has occurred or may occur in respect of the child, or to which a child may have been a witness. Upon intervening, the director, is entitled to receive notices and participate in the proceeding. Provide that the director may make a report to the Court, which report is to be sealed unless the Court otherwise directs.
Rationale	Child Protection may be aware of a custody or parenting proceeding, and they may have information from present or past experiences with the family that tends to show that a parent has engaged in family violence that affects the child involved in the proceeding. Child Protection workers, however, feel unable to take any action because of the confidentiality of the information, so that the court is left to make its custody or parenting decision without the benefit of the information, which

	may be important. In addition, there are cases in which Child Protection will take the child into care if custody or parenting rights are given to a parent whom they consider abusive, and this likelihood should also be brought to the court's attention.

Custody and access disputes where family violence has occurred: screening and reporting by family court counsellors

Current	Family Court Counsellors attached to the Provincial Court, Family Division, often do screening for family violence through intake interviews with applicants for child custody or access. They may make risk assessments and help abused family members to make safety plans. However, there is no specific legislative authority for them to do so and no procedure for the filing of a report with the Court. S. 1.6 is new.
Proposed S. 1.6	Provide that a Family Court Counsellor, or other court official who performs an intake or screening interview for a custody or parenting application or an access application, who has reasonable grounds for suspicion of family violence, may ▪ make an assessment of the risk of family violence, ▪ assist an abused family member to make a safety plan, ▪ notify a director of child welfare of the circumstances, and ▪ prepare and file a report with the Court. Provide that a report prepared under this provision must be sealed until the Court otherwise directs.
Rationale	The screening, risk assessment and safety-plan functions of Family Court Counsellors should have a legislative foundation, and the legislation should go on to provide for the making of a report to the Court so that the Court may have the benefit of their information. The legislation should apply to officials performing the screening or intake function for any court dealing with custody/parenting or access/contact issues, however the officials may be designated.

Custody and access disputes where family violence has occurred: investigation by child welfare

Current	Under Queen's Bench Family Practice Note 8, the Queen's Bench, in the Edmonton area, may request a CFSA to appoint a special investigator to make a report when there is an allegation of sexual abuse. S. 1.7 is new, but it would provide an alternative means of obtaining an investigation in a custody or access dispute where family violence may have occurred.

Proposed S. 1.7	Provide that:
	• In a custody or parenting proceeding in the Queen's Bench or the Provincial Court, or a Unified Family Court, a judge who is of the opinion
	  • that there are reasonable grounds for suspicion that family violence has occurred, and
	  • that the parties before the court may not adequately protect the interests of the child involved in the proceeding
	may, through a judge designated for the purpose, request that a director of child welfare conduct an investigation, which request will be deemed to be a report under s. 4 of the *Child Welfare Act*.
	• On receipt of the request, the director may investigate and file a report with the Court
	  • stating a conclusion that in his opinion no further investigation is necessary, or
	  • giving their findings as to whether or not family violence has occurred and the likely effect on the child involved in the proceeding.
	• A director acting under this provision may obtain assistance from a police service or other professionals.
	• A report filed with the Court under this section must be sealed until a judge of the Court otherwise orders.

Rationale	The procedure under Family Practice Note 8 has been found to provide valuable information for the court when there is high conflict between the parties to a custody or parenting application and the interests of the child involved in the application are not being adequately protected. A similar procedure should be adopted for all family violence cases and should be available throughout the province, where practicable. When a Unified Family Court is established, the provision should apply to that Court. The proposal would *bring the procedure under the umbrella of the Child Welfare Act*, so that the director will act in that setting and with all the powers provided by the *Act*. S. 35 of the *Youth Criminal Justice Act* (Canada) provides that the Court may refer a young person to a director of child welfare for assessment to determine whether the child is in need of child welfare services, and the new s. 4(1.1) which will be added to the *Child Welfare Act* by Bill 24 provides that a referral under s. 35 is deemed to be a report under s. 4(1) of the *Child Welfare Act*. What is proposed here is a comparable procedure for comparable circumstances.

Representation of children's interests	
Current	There is no general provision for the appointment of lawyers to represent children or their interests in custody/parenting and access/contact disputes.
Proposed	Provide that, in a custody or parenting proceeding in the Queen's Bench or the Provincial Court, or in a Unified Family Court, a judge who is of the opinion ▪ that there are reasonable grounds for suspicion that family violence or abuse has occurred, and ▪ that the parties before the court may not adequately protect the interests of the child involved in the proceeding may direct that a lawyer be appointed to represent the child's interests and to bring the child's wishes before the court. Provide that a Ministry or Alberta Legal Aid will provide a lawyer.
Rationale	See Part II of this Report, Custody and access in cases of family violence, representation of children There are family violence and abuse cases in which contending parties are not protecting the interests of the child involved. A lawyer for the child will be able to bring before the court information and considerations that will give the court a better basis for decision.

Custody and access disputes where family violence has occurred: court power to obtain personal information	
Current	S. 40(1)(g) of the *Freedom of Information and Protection of Privacy Act*, in combination with s. 126 of the *Child Welfare Act* allows a public body to disclose information in accordance with a court order, subpoena or rule of court.
Proposed S. 1.8	Provide that: ▪ A party to a custody/parenting or access/contact proceeding must disclose to the court any existing orders relating to the parties to the proceeding or the child or which may relate to the rights or responsibilities of either of the parties in relation to the child. ▪ In a custody or access proceeding, the court may order a party to obtain from a police service or director of child welfare or any other person or agency, and file with the Court personal information about that party that is relevant to the custody or parenting proceeding.
Rationale	The disclosure requirement and the power to order a party to obtain personal information and disclose it to the court are

	additional tools to assist the court in making appropriate dispositions of custody or parenting proceedings and avoiding conflicts among orders. Under existing law, the court can compel the production of information by Child Welfare and police services. The proposed provision, however, will build on *FOIP/Child Welfare Act* provisions and make it clear that the court can require the disclosure of personal information of abusers, victims, and children.

Custody and access disputes where family violence has occurred: safe exchange and supervised access

Current	A court dealing with access has the power to require supervised exchange and visitation. Few facilities exist for supervised exchange and visitation.
Proposed S. 1.9	Provide that the Minister of Children's Services may arrange programs for supervised visitation and supervised exchange of children.
Rationale	The exchange of children for visitation purposes, and actual visitations are occasions in which violence is more likely to occur and an abusive parent is more likely to abuse or abduct a child. Children are sometimes exchanged at a McDonald's or a police station, but that is not satisfactory and it is no guarantee against confrontation. The purpose of providing for supervised exchange and visitation is to bring it into the legislative framework and authorize the provision of programs for accomplishing supervised exchange and visitation. As such programs cross-departmental lines, general provisions for programs do not seem sufficient. It is often difficult for parents to arrange for properly supervised exchange and visitation. At present, facilities are lacking, and there are risks of conflicts between parents at the time of exchange and of abuse by the access parent to the child. The proposed s. 1.9 provides for programs under which safe exchange and supervised visitation can be conducted. The importance of safe exchange is pointed up by the recent Red Deer double murder and suicide on the occasion of an exchange.

Premier's council on family violence	
Current	There are two bodies that have functions in supervising and contributing to the overall response to the problem of family violence in Alberta. The Office for the Prevention of Violence is a small unit in the Ministry of Children's Services that does not have the resources or the place in the Government structure that is needed to bring about an effective coordination and integration of services, public education and design of the overall response. The Interdepartmental Committee on Family Violence does not have the place in the governmental structure or the substantial organization needed to perform the whole function.
Proposed S. 1.10	Establish the Premier's Council on Family Violence to: • arrange for research into responses to family violence in other jurisdictions and for the collection of statistics relating to the effectiveness of Alberta's response to family violence; • increase public awareness of the problem of family violence and of the need to respond to the problem; • encourage service providers and other groups in each community to organize themselves for integrated responses to the problem of family violence, with resources to provide for paid coordinators of local services; • oversee the implementation of these recommendations, including funding; • monitor Alberta's response to family violence; and • report annually on its activities and make recommendations for improvement. Make the following provisions for the Premier's Council on Family Violence. • The Council would be established by the *Act*. • The Council would consist of: ◦ the Premier as chair, though not likely to be involved in the day-to-day business of the Council. A vice-chair could be named by Order in Council, with alternates, with the expectation that they would usually preside at Council meetings. ◦ the Deputy Ministers of the principal ministries involved in the response to the problem of family violence. These should include Children's Services, Health and Wellness, Justice, Seniors and Housing, and Solicitor General. They could include Learning and possibly others. ◦ members of the public appointed by Order in Council, to include members of community and provincial organizations involved in the response, including

Aboriginals, as well as public-spirited citizens who are not involved in the response, the number of public members should not be less than the number of Deputy Ministers. Some process should be developed to ensure that those appointed will have the confidence of local communities.

- The Council would be supported by an administrative office in the Ministry of Children's Services or other ministry, headed by a director who would be the Chief Executive Pfficer of the Premier's Council.

Make the usual house-keeping provisions, such as financial arrangements, terms of appointment, etc.

Rationale

Continuing and coordinated effort is needed if the effectiveness of responses to the problem of family violence is to be maximized.

- Research is needed to ensure that measures adopted produce good outcomes.
- Increased public awareness of the problem of family violence and of the response to it is essential to an appropriate response.
- The ultimate test of the response to family violence is its effectiveness in communities. Communities should be encouraged to provide integrated responses to family violence that suit the individual community.
- Monitoring Alberta's response to family violence, periodic reporting and recommendations for improvement disclosed by experience are essential to maintaining adequate responses.

It is necessary that there be a continuing agency charged with the responsibility of doing the job. It is also necessary that the agency:

- be properly funded;
- has a high visibility that symbolizes the importance of responding effectively to the problem of family violence;
- commands the respect and support of the ministries that are necessarily involved in the response; and
- is sensitive to community needs and commands community support.

The proposed Premier's Council is the best effort we can make to ensure that the continuing agency will meet these criteria

For reasons given in the General Introduction and in the section of Part II dealing with the Premier's Council on Family Violence, if it is not practicable to enact general legislation on family violence, a special statute should be enacted to establish the Council.

Grounds for granting an emergency protection order	
Current	In order to grant an Emergency Protection Order (EPO), a justice of the peace or judge must make two findings. One is that family violence has occurred. The other is "that, by reason of seriousness or urgency, the order should be granted to ensure the immediate protection of the claimant". This wording suggests that an EPO cannot be granted unless an abuser has access to the victim and is likely to engage in violence almost immediately, and it has been interpreted this way, so that, for example, the fact that an abuser is in custody, or the fact that an abuser, though on his way, has not yet reached the area where the victim resides, means that an EPO will not be granted.
Proposed Part 4 S. 2(2)	Amend s. 2(2) so that an EPO can be granted if: • family violence has occurred; and • a family member is at risk of recurrence of family violence.
Rationale	See Part II of this Report, Threshold Requirements for EPOs While an EPO may impose hardship upon an alleged abuser after only one side has been heard, the need for protection of victims of family violence and abuse outweighs the inconvenience to respondents.

Service of Queen's bench protection order by police	
Current	Under s. 5 of *PAFVA* and s. 7 of the *Protection Against Family Violence Regulation*, the police will serve an Emergency Protection Order, but a Queen's Bench Protection Order must be served under the Alberta Rules of Court.
Proposed Act S. 5. Reg s. 7.	Amend the *Act* and *Regulation* to provide that the police or person named by a judge will serve a Queen's Bench Protection Order.
Rationale	See Part II of this Report, Service of Protection Orders If the responsibility for serving an emergency protection order on an abusive family member were the responsibility of the abused family member, the latter would either have to serve the order personally, with consequent risk of violence at the time of service, or arrange and pay for service by someone else, which may be beyond both the emotional and financial capacity of an abused family member. Provision is, therefore, made for effecting service by the police. The same considerations apply to the service of a Queen's Bench Protection Prder, and service should be effected by the police.

Sanctions for breach of an emergency protection order or queen's bench protection order

Current	*PAFVA* does not prescribe any penalty for breach of an EPO or PO. An offender can be committed for contempt. S. 127 of the *Criminal Code* makes breach of an order an indictable offence.
Proposed New section	▪ Provide that a breach of an EPO or PO is a provincial offence. ▪ Provide that an arrest for a breach may be made without warrant on reasonable and probable grounds for belief that a breach has occurred. ▪ Provide that the relevant *Criminal Code* provisions otherwise apply, following the wording of the *Provincial Offences Procedure Act* in that regard.
Rationale	See Part II of this Report, Sanction for breach of an EPO or PO ▪ *Criminal Code* s. 127 makes any breach of an order an indictable offence. This is too heavy a remedy for minor non-violent breaches. Making breaches provincial offences will provide a more flexible remedy. ▪ Merely making breaches provincial offences would make s. 127 non-applicable. S. 495 of the *Criminal Code*, which would be made applicable by the *Provincial Offences Procedures Act*, allows arrest without warrant in other than an indictable offence only if a peace officer finds the offender committing the breach. This is not appropriate in family violence cases. A peace officer should be able to arrest without warrant if they have reasonable and probable grounds to believe that family violence has been or will be committed, so this power should be specifically included. ▪ This provision should be vetted for constitutionality. If it is found unconstitutional, the provision should not be made. It would be better to have the existing inappropriate sanction continued rather than lose the power to arrest on reasonable and probable grounds, given the serious, and indeed tragic, consequences that may follow in a serious case of family violence.

Application for emergency protection order where victim's consent is not sufficiently reliable

Current	S. 6(1)(b) of *PAFVA* allows "a person or a member of a category of persons designated in the regulations" to make an application for an Emergency Protection Order or a Queen's Bench Protection Order on behalf of a person who has been subject to family violence, but only with that person's consent. The

	Regulation designates the police, police agents, and persons designated by the Minister of Children's Services. S. 6(1)(c) provides that the application can be made by any other person on behalf of the abused person, with leave of the judge.
Proposed	Amend s. 6(1)(c) to read: "by any other person, including a person referred to in clause (b), with leave of the judge."
Rationale	See Part II of this Report, Application for Emergency Protection Order. There are occasions on which a police officer believes that elder abuse is occurring but cannot make an application for an emergency protection order on behalf of the abused person because the abused person is somewhat confused and the police officer cannot legitimately rely on the abused person's capacity to give a valid consent. As the section now stands, any OTHER person can make an application with leave of the judge, which grammatically excludes the police officer, because the police officer has been referred to in s. 6(1)(b). There is no reason why, if any other person can make the application, a police officer (or social worker) cannot make it. The requirement of the leave of the judge is sufficient protection against an improper use of the power, as the police officer would have to give the judge an adequate explanation of the lack of valid consent.

Part IV: Recommendations From the March 31 Report not Dealt with in this Report

Parts II and III of this Report implement many of the Recommendations made in our March 31 Report. They do not implement them all. We reproduce here those that are not implemented. We urge that they be implemented. They are necessary to an integrated and coordinated response to the problem of family violence.

A Coherent and Principled Response

We recommend:

- That the Alberta response to family violence should be coherent and principled and should to the extent practicable include the following components:
  - effectual police action whenever family violence occurs;
  - adequate protection for partners who are abused;
  - adequate financial support, counselling, and accommodation and shelter for partners who are abused and their children;
  - protection of children who have been abused or who are at risk of abuse, including children who have witnessed parental violence;
  - effectual prosecution of criminal charges against violent partners;
  - court dispositions that will impose appropriate sanctions for criminal conduct and, where appropriate, will impose conditions intended to prevent recurrence;
  - counselling and treatment of violent partners where appropriate.
  - effectual enforcement of court dispositions.

- That a Government agency be given continuing responsibility for:
  - following current developments in the area of family violence in other related jurisdictions;
  - in consultation with agencies that participate in the Alberta response to family violence, preparing an annual report evaluating the response, and identifying current needs.

Comment

A strong conceptual basis is needed if the Alberta response to family violence is to meet the challenges.

Information Flow Between Courts

We recommend that a system should be set up now, pending the establishment of common computer records for the Queen's Bench and the Provincial Court, to transfer information by such practical means as can be worked out by court administrators, which would include:

- the flagging of family violence files on both criminal and civil sides;
- giving the names of persons who obtain orders in family violence matters, the names of person against whom the orders are made by reason of family violence, and the names of children involved;
- stating the nature of orders made, and, where applicable, conditions attached to orders;
- recording in retrievable form breaches of restraining orders, protection orders and Emergency Protection Orders for use, where relevant, in future civil or criminal proceedings.

Coordination and Integration of Response

We recommend:

- that coordinating and integrating the responses of various services to family violence should be a first priority of efforts to improve the overall response to family violence;
- that ways be found to promote coordination and integration, whether through the Interdepartmental Committee on Family Violence, the Office for the Prevention of Family Violence, or such other structure or device that will be able to cross departmental lines as seems likely to produce the best results.

In particular we recommend that:

- Head offices be persuaded that coordination and integration of services in relation to family violence is necessary for efficient and effectual action.

- At management level, the agencies adopt measures to impress upon the service providers in all of the systems with the magnitude of the problems of public violence and the need to provide coordinated and integrated responses to family violence. This would involve satisfying management levels in all of the services the need for, and utility of, such co-operation.
- Efforts be made to get service provides together at local levels and devise their own ways of coordinating and integrating their services. Well-developed examples are the Calgary and Edmonton Domestic Violence Courts and the Lethbridge Domestic Violence Action Team. Local service providers should make such efficient and workable arrangements, as their local circumstances require as, e.g., the Edmonton Community Initiative Against Family Violence is now doing.
- Agencies recognize, by job descriptions, time allocations and provision of opportunities to meet other agencies, the importance of establishing good working relationships with other service providers with a view to providing coherent and integrated responses to family violence.

Funding of local initiatives

We recommend that funding be made available both to defray expenses involved in local services and communities getting together to provide coordinated and integrated services and to defray expenses in maintaining local arrangements, such as funding for a paid coordinator.

Comment

If local service providers come up with a business plan for the coordination and integration of services dealing with family violence, the amount of funding required is likely to be small and the return for that funding is likely to be of great value to the community.

Calgary and Edmonton Domestic Violence Courts and Related Services: Calgary Domestic Violence Court

We recommend that the continuance of the Calgary Domestic Violence Court be treated as a major priority, including:

- assuring that the current special funding will be replaced by secure funding, whether from the Province or elsewhere.
- Crown Prosecutors dedicated to the project.
- the use, through peace bonds, probation orders and conditional sentences, of condition requiring violent offenders to undergo treatment or counselling.
- the participation of court-associated social workers, with a view to providing continuing support and information for abused partners and children, information and advice for case conferences, and information for the court.
- the close participation of Probation Officers, including sufficient staffing to reduce the existing excessive caseloads.
- funding for programs for treatment and counselling of violent partners.
- its extension to include trial court.

Edmonton Domestic Violence Court

We recommend that the Edmonton Domestic Violence Court:

- continue to operate its trial court and its first appearance court.
- be encouraged and funded to ensure that it will be able to provide integrated services similar to those of the Calgary Domestic Violence Court.

Other Domestic Violence Courts

We recommend that the government work with the courts to establish, where numbers warrant:

- a trial court dedicated to family violence offences.
- a first-appearance court, to be operated on similar principles with similar services attached and available.

The Lethbridge Domestic Violence Action Team Project

We recommend:

- that recognition be given to the importance of DVAT as an example of a community and local services coming together to provide coordinated and integrated responses to family violence.
- that agencies involved be encouraged to maintain and improve DVAT.
- that funds be made available for a paid coordinator for DVAT.
- that DVAT's response to family violence be augmented by the provision of funds for the treatment and counselling of violent partners.

CARRT and other police-social worker teams

We recommend:

- that the Edmonton and Calgary CARRT Teams be continued as important components in the proper investigation of domestic violence and the needs of children where domestic violence has taken place;
- that similar teams be established where the volume of population and incidents of family violence justifies them;
- that secure funding be found for the Zebra operation;
- that other arrangements involving police and social workers acting in concert, including the EPS Domestic Violence Intervention Teams and the Association of Social Workers with LPS be continued.

Crisis Lines – Edmonton Crisis Unit and Calgary Rocky View

We recommend that these crisis lines be maintained and that everything needed to maintain and increase their effectiveness be done so that an abused partner may continue to be able to obtain:

- immediate advices as to how to secure their safety;
- immediate communication with a women's emergency shelter, if needed;
- reference to community services;
- access to a social worker who is on call;
- emergency provision for accommodations and food.

Recommendation

There are many subjects that are of prime importance but about which we have not made any specific recommendations. These should be kept in the forefront of the minds of anyone who has responsibility for the community response to family violence. Some of these are as follows.

Women's emergency shelters

Women's emergency shelters are an essential, though not in themselves sufficient, component of the response to family violence, providing safety and support in a crisis. Too many women have to be turned away by the shelters, particularly in large urban centres. The shelters should be supported. It is desirable that uniform standards be adopted for them.

Victims' services

Victims' services under various names are an inspiring example of people helping people. Their volunteers, in their hundreds, are not usually trained professionals, but they extend support and a helping hand to women at times of high stress and, too often, physical danger. They and their work should be encouraged by all necessary means.

New Identities for victims of abuse

NIVA is a last resort for women and children who can be assured of protection against a violent partner in any other way.

Court-related supports for children

A service which prepares children for the traumatic experience of giving testimony in court in a family violence situation is valuable and should be made available wherever possible.

Protection and Restraining Order Project

We heard from many sources that PROP was a good and efficient project for helping women to obtain Emergency Protection Orders in time of crisis. We have not made a specific recommendation for the establishment of such projects, but this is something that should be kept under consideration.

Public information and education

As public attitudes are fundamental to community response to family violence, the subject of information and education for the public should be kept in mind at all times. Prevention of Family Violence Month is one useful measure. Inclusion of discussions of the subject in appropriate school courses would be another.

Appendix A: Community Corrections Protocol in Cases of Alleged Family Violence

This protocol applies where a charge is laid or a conviction is incurred involving family violence.

This protocol reflects the best practices of probation officers in cases of family violence. Departures from the protocol may be required due to regional circumstances including:

- local or regional court practices;
- the availability and type of treatment resources in a community;
- practices of local Aboriginal communities; and
- practices of other local service providers in a community.

An offender may be placed on a Conditional Sentence Order or Probation Order as part of a court disposition if the offender is found to be guilty or pleads guilty to the offence for which the charge was laid.

Probation officers have a dual role in providing supervision to an offender in the community. Probation officers assist in the rehabilitation of offenders by referring them to appropriate counselling agencies. Probation officers also enforce the conditions of a Probation or Conditional Sentence Order. Through these roles, probation officers contribute to the protection of society and to the protection of victims. In the area of rehabilitation, the role of probation officers is to work with offenders to prevent a repetition of the offence by linking them with programs and by supporting and encouraging them to effectively utilize these resources.

In the area of enforcement the role of the probation officers is to enforce orders made by the courts. Breaches concerning "keep the peace and be of good behaviour" are the responsibility of the police.

Probation officers, in most cases and wherever possible, maintain contact with the offender's partner. Information provided by the abused partner assists in the enforcement of the conditions and ensures the accountability of the offender. Probation officers can offer support to the victim by

actively educating him/her about the role and process of probation and can support the victim's continued co-operation with enforcement agencies by assisting him/her in linking with appropriate community services, such as counselling and shelters.

As a result of their dual responsibility, probation officers play an integral role in linking the justice system and community services.

1. Initial Intake Procedure

When placed under supervision by the court, an offender receives a Conditional Sentence Order or a Probation Order that sets out certain conditions. All court orders contain the conditions to keep the peace, be of good behaviour, and to appear before the court when required. Additional conditions, which relate to family assault cases, can be added at the time of sentencing, such as:

- reporting to and being under the supervision of a probation officer;
- not associating with the abused partner and/or having access to the abused partner;
- limited access to children;
- participating in treatment and/or counselling as directed;
- any other case-specific conditions.

Specific and clear wording of conditions in orders make laying breach charges easier, should that action be necessary.

Following sentencing, the offender is assigned to a probation officer who meets with the offender and conducts an assessment that determines a plan of supervision. In conducting this process, the probation officer uses a number of possible sources of information to complete an assessment and develop a supervision plan that is accurate and appropriate to ensure the accountability of the offender.

Probation officers are expected to verify all client-reported information through collateral contacts. As part of the process the abused partner is contacted as a primary source of information. If the abused partner's whereabouts are unknown, the probation officer will check with the police and/or the Crown Prosecutor to ascertain if there is an updated address and telephone number on file.

This contact also provides an opportunity to explain to the abused partner the role and process of probation and to assist them in understanding the need for enforcement to continue. The probation officer should endeavour to provide an open, supportive atmosphere to discuss and deal with any questions, concerns, or fears the abused partner may have about the process. This assists the abused partner in understanding the procedure, and also assists probation officers in identifying any potential safety issues.

Other individuals that assist in verifying client-reported information and assessing safety need are as follows.

- Police, through the occurrence report, the investigating officer, or information from CPIC or JOIN. Other community professionals as appropriate.
- Collateral contacts related to the safety of the abused partner should be maintained throughout the supervision process.
- Officers will advise and discuss with the abused partner the confidentiality of the information they provide and the limitations of confidentiality.

2. *Rehabilitation*

Facilitating the rehabilitation of the offender is one of the roles of the probation officer. If an offender has a supervision order with a condition to attend a specific type of treatment or counselling, then the probation officer is responsible for assisting the offender in accessing the appropriate community based agency for service and ensuring the offender attends and participates. Follow-up and communication with service professionals and agencies is ongoing. If an offender does not have a specific condition for treatment, the probation officer will work with the offender to promote appropriate counselling.

Treatment may include referrals to some of the following:

- social workers/therapists;
- spousal abuse programs;
- substance abuse counselling.

In those situations where the offender has been charged with generalized violence or there are indications of substance abuse, referrals to substance abuse counselling are appropriate prior to a referral to a spousal abuse program.

In the event the offender does not attend treatment or attends but is not amenable or does not abide by any other related conditions, the officer will review the case and determine the course of action for the breach of conditions.

3. *Enforcement*

In the area of enforcement a probation officer's role is to ensure the offender's compliance with the conditions of the court order. In the event of non-compliance, the probation officer must have reasonable and probable grounds to cause appropriate actions to be taken. The action will vary depending on the nature of the violation and other circumstances of the offender.

The goal of enforcement is to ensure the offender is accountable for his/her actions and to correct behaviour; the safety of the abused partner and children being paramount. Enforcement can include any combination of the following:

- increased supervision;
- issuing a verbal/written warning;
- variation of conditions;
- a criminal charge;
- a criminal charge of Failure to Comply with a Probation Order;
- attempting other therapeutic interventions;
- revoking a Probation Order.

3.1 Assessment of Enforcement Options:

In all instances of a breach of the order, the probation officer decides on the appropriate enforcement action. While generally probation officers progressively increase the severity of enforcement options, more immediate serious sanctions will be imposed automatically if it is determined there is a risk to the abused partner or if the abused partner feels at risk from any violation.

More immediate serious sanctions for violations include a Failure to Comply charge (breach of probation) that can be laid by the probation officer.

The conditional sentence is a relatively new sentence. It allows a judge to impose a jail sentence; however, the judge may allow the sentence to be served in the community under conditions specified by the court,

where the court is satisfied that the offender does not present a danger to the community. Breaches of the conditional sentence must be brought back before the court for a hearing. An Allegation of a Breach of a Conditional Sentence initiates a review by the court of the conditional sentence. Legislation allows for the offender to be returned to the court by way of a Summons or a Warrant. Depending on the seriousness of the violation, the court may: a) take no action; b) change the optional conditions of the order; c) suspend the Conditional Sentence Order and direct the offender to serve in custody a portion of the unexpired sentence or terminate the Conditional Sentence Order and direct the offender to be committed to custody until the expiration of the sentence. A Breach of Probation is a criminal offence while a breach of a conditional sentence results in the original sentence being reviewed. In instances where the breach of conditions constitutes a new criminal offence, the new criminal charge(s) shall be investigated and, if appropriate, laid by police. Information regarding new offences may come to the attention of a probation officer from a number of sources.

If the information regarding a violation or new offence is received from the abused partner, the probation officer will discuss the situation with the abused partner and encourage and support them in reporting the matter to the police.

If the abused partner is not agreeable to contacting police and the probation officer has reason to believe a crime has been committed or that the abused partner is in life-threatening danger, the probation officer will contact police. Further, if the probation officer believes that the children are at risk of being or have been exposed to domestic violence he/she shall contact Child Protection as per the *Child Welfare Act*.

If information regarding an assault on the offender's partner is brought by the offender, the probation officer will notify the police to conduct an investigation. If the information is received from another source, the probation officer will contact the partner to verify the information and proceed as above.

3.2 Revocation:

Another enforcement option available to a probation officer is the revocation of an offender's Probation Order. Revocation provides an opportunity for the Crown to apply to the judge to have an offender's

Probation Order revoked when an offender has both committed and been convicted of a new offence during the term of the Probation Order. A revocation may only be initiated where the original disposition includes a suspended sentence or a conditional discharge.

A Probation Order that is revoked is terminated and the judge may then impose any sentence that the offender could have received at the time of sentence when the Probation Order was imposed.

4. Working With Other Services

There are many components in a community's response to family violence, any of which may be involved in the response to a specific incident. These components can include responses by police services, child protection, crown prosecutors, the courts and community corrections. They may also include responses by victims' services and other social agencies that provide support for victims of family violence. They may include emergency shelters and income and support benefits. Each of these agencies has a function to perform, and each of them may have information and insights into a specific family situation.

Coordination and integration of responses of agencies is necessary for efficient and effectual action in cases of family violence. In order to play their part in the necessary coordination and integration, probation officers should:

- Read and understand protocols detailing the functions of the other services listed above, and identify the points where their activities interface with the activities of other services.
- Actively cultivate good working relationships with members of other services with whom they have frequent professional contact and work together with them to coordinate and integrate their efforts.
- Sharing information with the members of other services, where the sharing is permitted by law, will enable both community corrections and another service to make better provision for the safety and well being of an abused partner or a child.

Cross training and meetings with other community services should be facilitated with a view to increasing each other's understanding of the functions and approaches of the other agencies to ensure that all services are coordinated and integrated. Cross training should be provided to service providers, key participants and client groups and managers.

A probation officer may share personal information with the following:

- A court.
- A member of a police service or a crown prosecutor for the purpose of law enforcement or to avert or minimize imminent danger to the health or safety of any person, e.g. sharing information about past violent episodes involving a violent partner so that a police service may take adequate precautions for the safety of the victim and children;
- A child protection worker if the probation officer has reasonable and probable grounds to believe, and believes, that a child is in need of protective services or intervention. In such cases the probation officer is under a legal duty to report the matter. This includes the presence of a child in the home of an offender under supervision for domestic violence, or in the home of a partner of an offender who is under supervision.
- A public body (e.g., Child Protection) in connection with an investigation.
- Any person if the person the information is about, or that person's guardian (i.e., the victim of family violence for information about the victim, and the victim as guardian for information about a child) consents to the sharing. (If the information is about an offender the relevant consent is the consent of the offender).
- A court order so provides.

Personal information should be shared only to the extent necessary to affect a coordinated and integrated response to family violence. The recipient of the personal information holds it subject to the same restrictions as the communicator.